

Philip J. Berg, Esquire
Pennsylvania I.D. 9867
LAW OFFICES OF PHILIP J. BERG
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E-mail: philjberg@gmail.com

Attorney in pro se and for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**DECLARATION OF PHILIP J.
BERG, ESQUIRE**

Date of Hearing: June 13, 2011

Time of Hearing: 10:00 a.m.

Location: Courtroom 10D

Declaration of Philip J. Berg, Esquire

I, Philip J. Berg, Esquire, am over the age of 18 and am a party to the within action. I have personal knowledge of the facts herein, and if called to do, I could and would competently testify. I am making this Declaration under the penalty of perjury of the Laws of the United States pursuant to 28 U.S.C. §1746.

1. On May 24, 2011, I received a call from Jason Q. Marasigan, Esquire, counsel for Defendant Orly Taitz, asking me if I would cooperate in the filing of a

1 Supplemental Rule 26(f) Report. I told Mr. Marasigan that I would cooperate and
2 to send me his proposed Supplemental Rule 26(f) Report.

3
4 2. On May 24, 2011, I received an email from Mr. Marasigan with his
5 Proposed Supplemental Rule 26(f) Report attached. *See* **EXHIBIT “1”**.

6
7 3. After reviewing Mr. Marasigan’s proposed Rule 26(f) Report, I sent
8 Mr. Marasigan an email refusing to cooperate with the filing of this document as it
9 contained false statements and false allegations regarding the Plaintiffs and
10 Plaintiff Lisa Ostella, which had never been raised before. *See* **EXHIBIT “2”**.

11
12 4. I received two (2) additional emails from Mr. Marasigan, stating he
13 was disappointed I would **not** cooperate with him. *See* **EXHIBIT “3”**.

14
15 5. I responded to Mr. Marasigan’s emails again and stated that this case
16 is two (2) years old, there had been a lot of filings, it was **not** the Plaintiffs
17 changing their story, but instead his client, and now they were attempting to
18 introduce new stories. I stated that I would **not** participate in deception or
19 perpetrating a fraud upon the Court. In particular, I pointed out that the statements
20 regarding Plaintiffs changing or reciting their case in a different manner was
21 completely untrue that Plaintiff Lisa Ostella was “placing commercial messages on
22 the pages, directing traffic to another website through which Ostella was selling
23 goods” *See* Mr. Marasigan’s Proposed Rule 26(f) Report on page 2, paragraph 2,
24 lines 18-24. I also informed Mr. Marasigan that I had the emails showing it was in
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1 fact Defendant Orly Taitz attempting to sell goods on her own website/blog site
2 through a third party. I told Mr. Marasigan if he would remove those statements, I
3 would take another look at his proposed Supplemental Rule 26(f) Report and make
4 a decision upon the completion of our communications, see **EXHIBIT “4”**.
5

6 6. I never received a response back from Mr. Marasigan to my email, but
7 instead received the Declaration of Orly Taitz filed with this Court on May 26,
8 2011, appearing as Docket No. 207. In Orly Taitz’s Declaration, she altered the
9 statement originally in Mr. Marasigan’s proposed Supplemental Rule 26(f) Report.
10 Now Defendant Orly Taitz is claiming that Plaintiff Ostella was selling T-shirts,
11 instead of goods as stated in the Proposed Rule 26(f) Report that Defendant Taitz
12 confronted Ostella and requested the contract and accounting of proceeds received.
13 *See* Orly Taitz Declaration, page 3, paragraph 9. Mr. Marasigan was placed on
14 notice that Defendant Orly Taitz’s statements were false and deceptive; despite this
15 Mr. Marasigan filed it anyway.
16

17 7. In addition, Exhibit “4” to Defendant Orly Taitz’s Declaration filed
18 May 26, 2011, is an altered/forged document purporting to be from the blog site
19 <http://defendourfreedoms.com> owned by Plaintiff Lisa Ostella. Defendant Orly
20 Taitz’s Exhibit “4” does **not** reflect what was actually posted and/or appearing on
21 Plaintiff Ostella’s blog site, but instead shows an email which Plaintiff Ostella sent
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1 out on my behalf from her campaign mailer and other additions on the right had
2 side of the page.
3

4 I declare under the penalty of perjury of the Laws of the United States and
5 California that the foregoing is true and correct.

6 Executed this 31st day of May, 2011 in the Commonwealth of Pennsylvania,
7
8 County of Montgomery.

9
10 /s/ Philip J. Berg
Philip J. Berg, Esquire, Declarant
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EXHIBIT “1”

From: **Jayson Marasigan** <jmarasigan@dacklaw.com>
Date: Tue, May 24, 2011 at 12:54 PM
Subject: Liberi v. Taitz, et al. - Rule 26(f) Report
To: philjberg@gmail.com
Cc: Martin Dack <mdack@dacklaw.com>

Dear Mr. Berg:

In furtherance of our conversation this morning, please find a copy of the draft Rule 26(f) report containing matters on behalf of Orly Taitz. I do not yet have trial and related dates from Dr. Taitz as of this moment, but anticipate getting eher availability shortly. In any event, as I mentioned during our telephone conversation, I believe that the 26(f) report your office filed actually covered more issues than were required under Rule 26(f) and LR 26-1. It seemed a lot of the information pertained to the 26(f) disclosures, which, as you can see from my draft, I request be provided only after procedural and jurisdictional law and motion are adjudicated. In any event, it seems we agree on a majority of the points that need to be addressed pursuant to Rule 26(f) and LR 26-1.

I look forward to working with you on this so as to avoid the Judge having to possibly read 2 reports.

As an aside, I reviewed your reply to the opposition I filed and in it you mentioned not having been listed on the certificate of service. Attached, please find the NEF that I received. If you are not receiving the NEFs, you should let the court know.

Very Truly Yours,

Jayson Q. Marasigan, Esq.
Dack | Marasigan, LLP
23041 Avenida de la
Carlota, Suite 300
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92653
Telephone: (949) 206-9848
Facsimile: (949) 206-9851
E-Mail:
jmarasigan@dacklaw.com


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Exhibit "1"

please return it to the sender immediately and delete the original message and any copy of it from your computer system. If you have any questions concerning this message please send an e-mail to jmarasigan@dacklaw.com*****

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 00415-TAITZ-Rule_26(f)_Report_(Draft).doc

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JAYSON Q. MARASIGAN (Bar No. 227225)
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Laguna Hills, California 92653
Telephone: (949) 206-9848
Facsimile: (949) 206-9851

Attorneys for Defendant Orly Taitz

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

LISA LIBERI and PHILIP J. BEG,
ESQUIRE and THE LAW OFFICES OF
PHILIP J. BERG and EVELYN ADAMS
a/k/a MOMMA E and LISA M. OSTELLA
and GO EXCEL GLOBAL,

Plaintiffs,
vs.

ORLY TAITZ, a/k/a DR. ORLY TAITZ,
a/k/a LAW OFFICES OF ORLY TAITZ;
a/k/a WWW.ORLYTAITZESQ.COM
a/k/a WWW.REPUBX.COM a/k/a ORLY
TAITZ, INC. and DEFEND OUR
FREEDOMS FOUNDATIONS, INC. and
YOSEF TAITZ and THE SANKEY FIRM
and SANKEY INVESTIGATIONS, INC.
and NEIL SANKEY and JAMES
SUNQUIST and ROCK SALT
PUBLISHING and LINDA SUE
BELCHER a/k/a LINDA S. BELCHER
a/k/a LINDA STARR; a/k/a
NEWWOMENSPARTY a/k/a
STITCHENWITCH a/k/a EVA BRAUN
a/k/a WEB SERGEANT a/k/a KATY a/k/a
WWW.OBAMACITIZENSHIPDEBATE.
ORG and EDGAR HALE a/k/a JD
SMITH; and CAREN HALE; and PLAINS
RADIO NETWORK, a/k/a PLAINS
RADIO NETWORK, INC. a/k/a PLAINS
RADIO; and BAR H FARMS; and KPRN
AM 1610; and DOES 1 through 200
Inclusive,

Defendants.

CASE NO. 8:11-cv-00485-AG (AJW)

**RULE 26(f) REPORT FILED BY
ORLY TAITZ**

Complaint Filed: May 4, 2009

I.

INTRODUCTION

II.

JOINT REPORT

A. **Statement of Claims, Affirmative Defenses and Key Legal Issues**

1. **Plaintiff**

2. **Defendants Orly Taitz and Defend Our Freedoms Foundation Inc.'s Synopsis**

Defendant Taitz denies the claims raised by Plaintiffs in their pleadings and in their Rule 26(f) Report. Plaintiffs have engaged in revisionist history in attempting to tailor their allegations to their claims, which are not in any way supported by the facts or evidence.

Plaintiff Ostella was Taitz's volunteer webmaster for her blog which was located on defendourfreedoms.us. That blog allowed its readers to donate money, using PayPal, to Taitz's political foundation, Defend Our Freedoms Foundation, Inc.

Some time after the blog was running, Taitz noticed that Ostella was placing commercial messages on the pages, directing traffic to another website through which Ostella was selling goods. When Taitz confronted Ostella about the commercial content, Ostella, utilizing her position of trust and confidence as Taitz's webmaster, retaliated by changing the e-mail address to which PayPal messages were directed. As a result of the e-mail address change, Taitz and her political foundation was unable to receive donations from readers of the blog.

When Taitz discovered that the PayPal e-mail address had been altered without her permission, she filed a report with the FBI and the police. Upon hearing of the FBI and police reports, Ostella demanded that Taitz withdraw the complaint or else find another webmaster and blog host. Taitz refused to withdraw the report and asked Ostella for 30

1 days to find a new blog server, which Taitz ultimately did. However, Ostella maintained
2 control of the defendourfreedom.us web address and attempted to deceive the general
3 public by using pages confusingly similar to Taitz's on her defenourfreedom.net web
4 address to solicit donations which went to Ostella's PayPal account. Ostella admits to this
5 conduct in Plaintiffs' Rule 26(f) Report.

6 Taitz, in order to avoid her readers' confusion, attempted to warn readers of her
7 blog by informing them of what happened.

8 **B. Subject Matter Jurisdiction**

9 Taitz is informed and believes that this court does not have jurisdiction to hear the
10 subject matter of this action because of incomplete diversity. Plaintiffs had originally pled
11 that Plaintiff Liberi was a resident of Pennsylvania and when they could not produce any
12 evidence to support that allegation, have since stated in their Rule 26(f) report that Libiri is
13 a resident of New Mexico. Plaintiffs' averment is insufficient to establish diversity under
14 the circumstances. Diversity is determined at the time the action is filed. Thus, a change
15 of a party's citizenship *after* commencement of the action does not affect the court's
16 jurisdiction. Diversity jurisdiction continues even if the opposing parties are now citizens
17 of the same state. (*Bank One, Texas, N.A. v. Montle* (1st Cir. 1992) 964 F.2d 48, 49; *Lewis*
18 *v. Lewis* (9th Cir. 1966) 358 F.2d 495, 502—P moved to California where D resided
19 during pendency of action; see *Saadeh v. Farouki* (DC Cir. 1997) 107 F.3d 52, 56–57–
20 change in citizenship after action commenced did not cure defect in complete diversity
21 existing when action filed)

22 Plaintiffs may attempt to vest subject matter jurisdiction based upon its purported
23 federal claims. Plaintiffs' attempt would not have any merit because their federal claims
24 are joined with alternative state law claims. Where *several* claims are joined in the
25 complaint, and alternative *state law* theories exist for *each* of those claims, there is no
26 federal question jurisdiction. (*Duncan v. Stuetzle* (9th Cir. 1996) 76 F.3d 1480, 1486;
27 *Dixon v. Coburg Dairy, Inc.* (4th Cir. 2004) 369 F.3d 811, 816 (en banc))

28 Taitz intends to challenge the court's jurisdiction to hear this matter based upon

1 lack of subject matter jurisdiction.

2 **C. Additional Parties and Amended Pleadings:**

3 Discovery has not commenced. As of the filing of this report, to the extent that the
4 case is allowed to continue after procedural motions are adjudicated, Taitz anticipates
5 filing a counter-claim against Plaintiffs for breach of fiduciary duty.

6 **D. Discovery and Experts pursuant to Rule 26(f)**

7 Defendant anticipates serving Interrogatories, Requests for Admission, and Request
8 for Production of Documents shortly after the initial exchange pursuant to Fed. R. Civ. P.
9 26(a). Anticipated discovery also includes depositions of the parties and government
10 agencies. The parties anticipate exchanging expert witness information and expert
11 depositions.

12 The parties believe that no changes need to be made to the timing, form, or
13 requirements of discovery.

14 **E. Anticipated Procedural Motions:**

15 Taitz intends to file a rule 12(b)(1) motion for lack of subject matter jurisdiction.

16 **F. Settlement Procedure and Discussion**

17 Plaintiffs and Defendant Taitz have engaged in preliminary settlement discussions.
18 Those discussions reveal that the parties are at opposite ends of the spectrum.
19 Notwithstanding, Taitz selects Settlement Procedure No. 1 whereby a Magistrate Judge
20 presides over settlement conferences pursuant to L.R. 16-15.

21 **G. Proposed Dates**

22 Trial:

23 Final Pre-Trial Conference:

24 Motion Cut-Off:

25 Expert Discovery Cut-Off:

26 Discovery Cut-Off:

27 Expert Witness Exchange:

28 **H. Conflicts**

1 The parties are unaware of any conflicts in this case.

2 **I. Complex Case:**

3 The parties do not believe that this case is complex or that any part of the Manual
4 for Complex Litigation should be utilized.

5

6

Respectfully Submitted,

7

DATED: May 31, 2011

8

DACK MARASIGAN, LLP
MARTIN E. DACK
JAYSON O. MARASIGAN

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Bv: _____

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JAYSON O. MARASIGAN
Attorneys for Defendant Orly Taitz

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EXHIBIT “2”

From: Philip Berg <philjberg@gmail.com>
To: Jayson Marasigan <jmarasigan@dacklaw.com>
Sent: Tue, May 24, 2011 5:10 pm
Subject: Re: Liberi v. Taitz, et al. - Rule 26(f) Report

Dear Mr. Marasigan:

I have reviewed your Rule 26(f) proposed report. I must advise you that I will not file a Supplemental Rule 26(f) because it is apparent that you have not read the pleadings in this case and especially your client, Orly Taitz's.

Ms. Taitz has filed altered documents throughout this case and obviously has created additional versions of her defense at this time that we will not be a part of.

Plaintiffs have been consistent with their version of the facts.

Your client, Orly Taitz, was aware of the deadline and chose not to cooperate.

Accordingly, you should file your Rule 26(f) yourself.

Additionally, a Proof of Service must include all parties regardless of what the ECF noification states.

Respectfully,

Philip J. Berg

On Tue, May 24, 2011 at 12:54 PM, Jayson Marasigan
<jmarasigan@dacklaw.com> wrote:
Dear Mr. Berg:

In furtherance of our conversation this morning, please find a copy of the draft Rule 26(f) report containing matters on behalf of Orly Taitz. I do not yet have trial and related dates from Dr. Taitz as of this moment, but anticipate getting eher availability shortly. In any event, as I mentioned during our telephone conversation, I believe that the 26(f) report your office filed actually covered more issues than were required under Rule 26(f) and LR 26-1. It seemed a lot of the information pertained to the 26(f) disclosures, which, as you can see from my draft, I request be provided only after procedural and jurisdictional law and

motion are adjudicated. In any event, it seems we agree on a majority of the points that need to be addressed pursuant to Rule 26(f) and LR 26-1.

I look forward to working with you on this so as to avoid the Judge having to possibly read 2 reports.

As an aside, I reviewed your reply to the opposition I filed and in it you mentioned not having been listed on the certificate of service. Attached, please find the NEF that I received. If you are not receiving the NEFs, you should let the court know.

Very Truly Yours,

Jayson Q. Marasigan, Esq.
Dack | Marasigan, LLP
23041 Avenida de la
Carlota, Suite 300
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92653

Telephone: (949) 206-9848

Facsimile: (949) 206-9851


E-Mail:

jmarasigan@dacklaw.com

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EXHIBIT “3”

From: **Jayson Marasigan** <jmarasigan@dacklaw.com>
Date: Tue, May 24, 2011 at 7:50 PM
Subject: RE: Liberi v. Taitz, et al. - Rule 26(f) Report
To: Philip Berg <philjberg@gmail.com>
Cc: Martin Dack <mdack@dacklaw.com>

Mr. Berg:

Thank you for your response. I will be separately submitting a Rule 26(f) report. I must add, however, that I am disappointed in your position given that the submission of a joint report is not in any way conditioned on a stipulation regarding the parties' various versions of the facts. As I told you this morning, it was still a work in progress given that we have only just recently been retained and, since this action is now over 2 years old, thought you would understand and extend some professional courtesies. What is more, as I told you this morning, I admitted that my client's participation is belated but had hoped to work with you on a submission of a supplemental report so as to avoid the court having to possibly waste its time reading separate reports.

As far as NEF and electronic service, I suggest you read CACD General Order 10-7, part VII, subpart A, which applies to all electronically filed documents. I trust that, after you read that section, that issue will be put to rest.

Very Truly Yours,

Jayson Q. Marasigan, Esq.
Dack | Marasigan, LLP
23041 Avenida de la
Carlota, Suite 300
Laguna Hills, California
92653
Telephone: (949) 206-9848
Facsimile: (949) 206-9851
E-Mail:
jmarasigan@dacklaw.com

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From: **Jayson Marasigan** <jmarasigan@dacklaw.com>
Date: Tue, May 24, 2011 at 8:00 PM
Subject: FW: Liberi v. Taitz, et al. - Rule 26(f) Report
To: Philip Berg <philjberg@gmail.com>
Cc: Martin Dack <mdack@dacklaw.com>

Mr. Berg:

In furtherance of my last e-mail regarding the CACD General Order, I presume that your ignorance regarding Local Rules and General Orders will be rectified once local counsel for your pro hac vice application gets involved. I understand that you have until June 13, 2011 to shore up that issue.

Very Truly Yours,

Jayson Q. Marasigan, Esq.
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Telephone: (949) 206-9848
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EXHIBIT “4”

From: Philip Berg <philjberg@gmail.com>
To: Jayson Marasigan <jmarasigan@dacklaw.com>
Sent: Wed, May 25, 2011 11:50 am
Subject: 26(f) Disclosures

Mr. Marasigan:

Thank you for your email. I am more than willing to cooperate and attempt to work with you. But, please understand, your proposed supplemental report contained new false allegations; new after two [2] years.

My clients' positions have never changed, nor have their facts. This is the first time, such statement, ["... Plaintiffs have engaged in revisionist history in attempting to tailor their allegations to their claims, which are not in any way supported by the facts or evidence."] has ever been made, so I cannot agree with that being in there. That has nothing to do with your client not agreeing with our synopsis, it is completely false. Just so you know, our synopsis is consistent with Plaintiffs Complaint and all of Plaintiffs filings.

There are numerous points on file with the Court showing it was in fact your client attempting to re-write the Plaintiffs case and showing your client continues changing her story.

Second, the story has now changed again falsely accusing Plaintiff Lisa Ostella of acts which never happened and we have the email from Orly Taitz to Lisa Ostella directing Lisa Ostella to add a sales link on behalf of Orly Taitz and other individuals.

This is the first I have ever heard this story from your client. I cannot cooperate with known falsehoods. Again, it has nothing to do with agreeing or not agreeing, it has to do with perpetrating a fraud upon the Court, which I refuse to cooperate with.

If you review your clients' filings with the Court, you will see her story, which in no way matches the synopsis you have prepared.

*** * If you are willing to remove the two [2] above theories: revisionist history and the selling of goods; I will be happy to look at the changes and make a determination once discussions have concluded.**

Respectfully,

Philip J. Berg, Esquire

Philip J. Berg, Esquire
Pennsylvania I.D. 9867
LAW OFFICES OF PHILIP J. BERG
555 Andorra Glen Court, Suite 12
Lafayette Hill, PA 19444-2531
Telephone: (610) 825-3134
E-mail: philjberg@gmail.com

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**PLAINTIFFS CERTIFICATE OF
SERVICE**

I, Philip J. Berg, Esquire, hereby certify a true and correct copy of Philip J. Berg
Esquire's Declaration in support of Plaintiffs Objections to Defendant Orly Taitz's
Declaration was were served through the ECF filing system and/or mail as ;this
this 31st day of May 2011 upon the following:

Jason Q. Marasigan
Dack Marasigan, LLC
23041 Avenida de la Carlota, Suite 300
Laguna Hills, CA 92653
Email: jmarasigan@dacklaw.com
Served via the ECF Filing System

Attorney for Defendant, Orly Taitz, Esquire

1 Orly Taitz
2 26302 La Paz Ste 211
3 Mission Viejo, CA 92691
4 Ph: [\(949\) 683-5411](tel:(949)683-5411)
5 Fax: (949) 586-2082
6 Email: orly.taitz@gmail.com and
7 Email: dr_taitz@yahoo.com
8 Served via the ECF Filing System

9 *Attorney for Defendant Defend our Freedoms Foundation, Inc.*

10 The Sankey Firm, Inc.
11 2470 Stearns Street #162
12 Simi Valley, CA 93063
13 By USPS Mail with Postage fully prepaid

14 Neil Sankey
15 P.O. Box 8298
16 Mission Hills, CA 91346
17 By USPS Mail with Postage fully prepaid

18 Sankey Investigations, Inc.
19 P.O. Box 8298
20 Mission Hills, CA 91346
21 By USPS Mail with Postage fully prepaid

22 /s/ Philip J. Berg

23 Philip J. Berg, Esquire
24 Pennsylvania I.D. 9867
25 **LAW OFFICES OF PHILIP J. BERG**
26 555 Andorra Glen Court, Suite 12
27 Lafayette Hill, PA 19444-2531
28 Telephone: (610) 825-3134
E-mail: philjberg@gmail.com